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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,399	10/23/2003	Lewis George Gradon	1171/41434	8486

279 7590 10/21/2005

TREXLER, BUSHNELL, GIANGIORGI,  
BLACKSTONE & MARR, LTD.  
105 WEST ADAMS STREET  
SUITE 3600  
CHICAGO, IL 60603

EXAMINER

PATEL, MITAL B

ART UNIT

PAPER NUMBER

3743

DATE MAILED: 10/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/692,399

Applicant(s)

GRADON ET AL.

Examiner

Mital B. Patel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/23/03, 10/19/04, 3/22/04</u> | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Amendment/Arguments*

1. Applicant's arguments filed 7/12/05 have been fully considered but they are not persuasive.
2. In response to Applicant's arguments that Suzuki is for displaying calculated values only, not sensed temperature, it should be noted that the calculated values are derived from the sensed values and as such Suzuki displays the sensed temperature. Also, Applicant does not preclude a calculated value from being displayed.
3. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., determining the lower temperature or use the lower of two sensed temperatures to provide a clinician with an indication of the moisture content delivered) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

### *Claim Rejections - 35 USC § 102*

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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5. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Suzuki (US 5,163,423).

6. **As to claim 1**, Suzuki teaches a humidification apparatus for humidifying a gas flow to be supplied to a patient or other person in need of such gas comprising: a humidification chamber **16** for holding a quantity of water and having an inlet and an outlet to allow said gas flow to pass through said humidification chamber, a heater **9** adjacent said humidification chamber and adapted for providing heat to said quantity of water in said humidification chamber in order to provide water vapour to said gas flow passing through said humidification chamber, a conduit **17** connected to said outlet of said humidification chamber for conveying said gas flow to said patient or other person in need of such gas, said conduit having a patient end, distal to said end connected to said outlet of said humidification chamber, a first temperature sensor **11** for sensing the temperature of said gas flow substantially at said outlet of said humidification chamber, a second temperature sensor **12** for sensing the temperature of said gas flow substantially at said patient end of said conduit, a display **14** for display of temperature information to a user, and a controller **4** or processor configured or programmed to receive input from said first and said second temperature sensor and outputs a signal to said display to cause a temperature to be displayed to the user which is the lower of the temperature sensed by said first and second temperature sensors (**See Col. 3-4, it should be noted that inherently the controller is able to display the temperature detected by both sensors which would include a lower temperature if such a temperature is sensed.**).

***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mital B. Patel whose telephone number is 571-272-4802. The examiner can normally be reached on Monday-Friday (11:00-7:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 9/19/05

Mital B. Patel  
Primary Examiner  
Art Unit 3743